Kerajaan Negeri Terengganu & Ors v Dr Syed Azman Syed Ahmad Nawawi & Ors (No 1)

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO 23 NCVC-106–12 OF 2011
YEOH WEE SIAM J
27 JULY 2012

Civil Procedure — Action — Defamation — Whether state government may intiate and maintain defamation action

Civil Procedure — Locus standi — Legal representation — Whether firm of advocates and solicitors may represent state government in defamation proceedings — Whether fiat or letter granted by state legal advisor duly retaining firm to represent state government — Government Proceedings Act 1956 s 24(3)

Civil Procedure — Locus standi — State government — Whether state government has locus standi to initiate and maintain defamation action

Civil Procedure — Parties — State government — Whether state government has locus standi to initiate and maintain defamation action

Constitutional Law — State government — Rights to commence legal action — Whether state government may initiate and maintain defamation action

Tort — Defamation — Parties — State government — Whether state government may initiate and maintain defamation action

The plaintiffs filed this suit against the defendants for defamation, namely, for publishing an article in the publication, *Harakah*, in relation to the aid programme of the first plaintiff which was to provide assistance to poor students in Terengganu. The defendants raised the following two preliminary issues: (i) that the first plaintiff, being a state government, cannot be made a party for the cause of action of the tort of defamation and therefore the action of the first plaintiff was an abuse of court process; and (ii) that the first plaintiff cannot be represented by Messrs Hisham, Sobri & Kadir ('HSK') in these proceedings as its solicitors since the solicitors had no locus standi to do so. When the writ and statement of claim were filed on 15 December 2011, the

first plaintiff's solicitors did not file or exhibit the fiat or letter of the state legal advisor duly retaining them to represent the first plaintiff in these proceedings. However, on 20 July 2012 HSK filed the fiat dated 13 December 2011 issued by the state legal advisor, authorising HSK to represent the first plaintiff.

Held, striking out the first plaintiff's claim with no order as to costs:

(1) While Parliament has enacted various Acts which it deems necessary or expedient to restrict the freedom of speech and expression such as the Sedition Act 1948, Official Secrets Act 1972, Printing Presses and Publications Act 1984, and laws on the control of imported publications, it has not enacted any law expressly to provide for the matter on whether the federal government or state government can institute civil proceedings for libel or slander against such government, or any of its servants or officers. Nowhere does the Defamation Act 1957 contain any provisions on the issue whether a state government should be allowed to maintain an action for defamation (see para 27).

(2) The common law position is spelt out in very clear and precise terms by the House of Lords in *Derbyshire County Council v Times Newspapers Ltd And Others* [1993] 1 All ER 1011. The first plaintiff, which is a state government, is a public authority. As such it does not have a personal reputation to protect. Neither does it have a governing reputation, as in the case of a corporation or statutory body/authority, to protect. The state government is duly elected by the members of the public through the democratic process and it should be transparent and accountable to the electorate. There should be freedom of speech and expression by members of the public in order to act as a check and balance on the executive and the government. It is therefore not in the interest of the public that the state government be allowed to institute or maintain any action for libel or slander against any person (see paras 28–29).

(3) HSK could only be allowed to represent the first plaintiff upon proof that they had been 'duly retained' or given a 'Fiat' by the state legal advisor of Terengganu. The writ, pleadings and submissions of the first plaintiff should not be accepted by the court since on the respective dates of the filing of the pleadings and submissions, the fiat was not exhibited in court to prove that the requirements of s 24(3) of the Government Proceedings Act 1956 had been complied with. However, in the light of the fact that HSK had filed the fiat dated 13 December 2012, the court gave the benefit of the doubt to the first plaintiff for the late filing of the fiat, and accepted the fiat as being duly given. This was done pursuant to the court's powers under O 1A and the inherent jurisdiction of the court under O 92 r 4 of the Rules of the High Court 1980. Therefore, HSK had locus standi to represent the first plaintiff in the proceedings (see paras 32, 36–38).

[Bahasa Malaysia summary

Plaintif-plaintif memfailkan tindakan ini terhadap defendan-defendan bagi fitnah, iaitu, kerana menerbitkan artikel dalam penerbitan, *Harakah*, berhubung dengan program bantuan plaintif pertama yang bertujuan memberi bantuan kepada pelajar-pelajar miskin di Terengganu. Defendan-defendan membangkitkan dua isu awalan iaitu: (i) plaintif pertama, sebagai kerajaan negeri, tidak boleh dijadikan kausa tindakan tort fitnah dan dengan itu tindakan plaintif pertama merupakan penyalahgunaan proses mahkamah; dan (ii) bahawa plaintif pertama tidak boleh diwakili oleh Tetuan Hisham, Sobri & Kadir ('HSK') dalam prosiding ini sebagai peguambela kerana mereka tidak mempunyai locus standi untuk berbuat sedemikian. Apabila writ dan pernyataan tuntutan difailkan pada 15 Disember 2011, peguambela plaintif pertama tidak memfailkan atau melampirkan fiat tersebut atau surat penasihat undang-undang negeri untuk mengekalkan mereka bagi mewakili plaintif pertama dalam prosiding ini. Walau bagaimanapun, pada 20 Julai 2012 HSK memfailkan fiat bertarikh 13 Disember 2011 yang dikeluarkan oleh penasihat undang-undang negeri, membenarkan HSK mewakili plaintif pertama.

Diputuskan, membatalkan tuntutan plaintif pertama tanpa perintah bagi kos:

(1) Walaupun Parlimen telah menggubal pelbagai Akta yang dirasakannya perlu atau suai manfaat untuk menyekat kebebasan bersuara seperti Akta Hasutan 1948, Akta Rahsia Rasmi 1972, Akta Mesin Cetak dan Penerbitan 1984, dan undang-undang ke atas kawalan penerbitan yang diimport, ia tidak menggubal mana-mana undang-undang nyata untuk memperuntukkan sama ada kerajaan perseketuan atau kerajaan negeri boleh memulakan prosiding sivil fitnah bertulis atau fitnah lisan terhadap kerajaan, atau mana-mana pekerja atau pegawai. Tiada dalam mana-mana bahagian Akta Fitnah 1957 mengandungi sebarang peruntukan mengenai isu sama ada kerajaan negeri harus dibenarkan untuk mengekalkan tindakan untuk fitnah (lihat perenggan 27).

(2) Kedudukan *common law* dinyatakan dalam terma yang sangat jelas dan tepat oleh House of Lords dalam *Derbyshire County Council v Times Newspapers Ltd And Others* [1993] 1 All ER 1011. Plaintif pertama, yang merupakan kerajaan negeri, adalah pihak berkuasa awam. Oleh itu ia tidak mempunyai reputasi peribadi untuk melindungi. Ia juga tidak mempunyai reputasi mentadbir, seperti dalam kes perbadanan atau badan berkanun/pihak berkuasa, untuk melindungi. kerajaan negeri dipilih dengan sewajarnya oleh orang ramai melalui proses demokrasi dan ia harus telus dan bertanggungjawab kepada pengundi. Perlu ada kebebasan bersuara oleh anggota awam untuk bertindak sebagai check and balance bagi eksekutif dan kerajaan. Oleh itu, tiada dalam kepentingan awam bahawa kerajaan negeri dibenarkan untuk

memulakan atau mengekalkan apa-apa tindakan bagi fitnah bertulis atau fitnah lisan terhadap mana-mana orang (lihat perenggan 28–29).

(3) HSK hanya boleh dibenarkan untuk mewakili plaintif pertama apabila bukti bahawa mereka telah 'sewajarnya dikekalkan' atau diberikan 'Fiat' oleh penasihat undang-undang negeri Terengganu. Writ, pliding dan hujahan-hujahan plaintif pertama tidak sepatutnya diterima oleh mahkamah kerana pada tarikh masing-masing memfailkan pliding dan penyerahan, fiat tidak dilampirkan di mahkamah untuk membuktikan bahawa keperluan s 24(3) Akta Prosiding Kerajaan 1956 telah dipatuhi. Walau bagaimanapun, melihat bahawa HSK telah memfailkan fiat bertarikh 13 Disember 2012, mahkamah memberikan manfaat keraguan kepada plaintif pertama untuk pemfailan lewat fiat, dan menerima fiat sebagai telah diberikan dengan sewajarnya. Ini dilakukan menurut kuasa mahkamah di bawah A 1A dan bidang kuasa sedia ada mahkamah di bawah A 92 k 4 Kaedah-Kaedah Mahkamah Tinggi 1980. Oleh itu, HSK mempunyai locus standi untuk mewakili plaintif pertama dalam prosiding (lihat perenggan 32, 36–38)]

Cases referred to

Bognor Regis Urban District Council v Campion [1972] 2 All ER 61, QBD (refd)

Derbyshire County Council v Times Newspapers Ltd and others [1993] 1 All ER 1011, HL (folld)

Lembaga Kemajuan Tanah Persekutuan & Anor v Dr Tan Kee Kwong [2012] 4 MLJ 622; [2012] 3 CLJ 87, HC (refd)

Mayor, Citizens and Aldermen of Manchester v Williams [1891] 1 QB 94, CA (refd)

National Union of General and Municipal Workers v Gillian and Others [1946] 1 KB 81, CA (refd)

South Hetton Coal Company Limited v North Eastern News Association Ltd [1894] 1 QB 133 (refd)

Sulaiman Mat Tekor & Ors v National Population and Family Development Board [2009] 7 MLJ 325; [2008] 10 CLJ 581, HC (refd)

Legislation referred to

Defamation Act 1957
Federal Capital Act 1960 s 4
Federal Constitution arts 10, 10(2), 160
Government Proceedings Act 1956 ss 3, 24(3)
Land Development Act 1956
Local Government Act 1976 ss 2, 13
Official Secrets Act 1972
Penal Code s 499
Printing Presses and Publications Act 1948
Rules of the High Court 1980 O 1A, O 92 r 4

Sedition Act 1948

Abu Bakar bin Jais (Abdullah Omar and Edynoor Hiefnee bin Razali with him) (Hisham Sobri & Kadir) for the plaintiffs.
Mohamed Hanipa Maidin (Azhana Mohd Khairudin with him) (Mohamed Hanipa & Associates) for the defendants.

Yeoh Wee Siam J:

DECISION (*in respect of preliminary issues*)

BACK GROUND FACTS

[1] The four plaintiffs filed a writ and statement of claim against the four defendants for defamation, namely, for publishing an article in the publication, *Harakah*, with the heading 'Seleweng RM30j bantuan sekolah?' ('the article'). This is in relation to the aid or assistance programme of the first plaintiff ie 'Program Bantuan Pakaian dan Alatan Sekolah' ('the programme'), which programme was to provide assistance to poor students in the State of Terengganu ('Trengganu') by supplying them with school uniforms and stationery.

[2] The first defendant is a member of the Terengganu State Legislative Assembly. He is also a columnist and writer for *Harakah*. He wrote the article which was published on 11–13 November 2011 by the fourth defendant in *Harakah*. The second defendant is the permit-holder of *Harakah*. The third defendant is the chief editor of *Harakah*.

PRELIMINARY ISSUES

[3] In the statement of defence, the defendants raised the following two preliminary issues:

(a) that the first plaintiff cannot be made a party for the cause of action of the tort of defamation. Therefore, the action of the first plaintiff is an abuse of court process; and

(b) that the first plaintiff cannot be represented by Messrs Hisham, Sobri & Kadir as its solicitors since the solicitors have no locus standi to do so.

THE COURT'S RULING/DECISION ON THE TWO PRELIMINARY ISSUES

[4] The civil suit was fixed for trial from 23–25 July 2012. Before the trial

date, during case management, the court had ordered both learned counsels to file their written submissions on the above two issues.

[5] After considering the submissions, including the law and the authorities of both parties, on 23 July 2012, I made the following ruling:

(a) whether the first plaintiff, being a state government, can maintain an action based on the tort of defamation against the defendants:

> The court rules that since the first plaintiff is a state government which has been duly elected by members of the public through the democratic process it has no capacity or locus standi to institute or maintain an action based on the tort of defamation against the defendants; and

(b) whether the first plaintiff can be represented by Messrs Hisham, Sobri & Kadir, as its solicitors, in these proceedings:

> The court rules that this is subject to proof of a Fiat being given by the state legal advisor to the said solicitors to represent him in these proceedings which otherwise should have been undertaken by the state legal advisor.
>
> I shall deal with this second issue in greater detail later on in this decision.

THE COURT'S REASONS FOR THE DECISION

Regarding the first issue

[6] In order to facilitate full understanding of the rationale behind this decision, I shall now determine the meaning what a statutory body/authority, public authority or local authority is.

[7] A statutory body/authority ('statutory body') is established under an Act of Parliament as a body corporate with perpetual succession and a common seal. It can sue and be sued. It can enter into contracts and hold property. It is a corporation, and has legal personality. A statutory body is generally independent of the government except that it is subject to some degree of control by the Minister (see Hishamuddin J's decision in *Sulaiman Mat Tekor & Ors v National Population and Family Development Board* [2009] 7 MLJ 325; [2008] 10 CLJ 581, and Zabariah Mohd Yusof J's decision in *Lembaga Kemajuan Tanah Persekutuan & Anor v Dr Tan Kee Kwong* [2012] 4 MLJ 622; [2012] 3 CLJ 87 ('the FELDA case')).

[8] With respect to the learned judge in the FELDA case, I am of the view that a statutory body or statutory authority is a public authority. This can be seen from the definition of 'public authority' under art 160 of the Federal Constitution which provides as follows:

'Public authority' means the Yang di-Pertuan Agong, the Ruler or Yang di-Pertuan Negeri of a State, the federal government, the government of a state, a local authority, a statutory authority exercising powers vested in it by federal or state law, any court or Tribunal other than the Federal Court, the Court of Appeal and High Courts, or any officer or authority appointed by or acting on behalf or any of those persons, courts, tribunals or authorities;.

[9] From the above definition, it should be noted that a statutory body/authority is a public authority. The government of a state ('state government') is also a public authority. However, a statutory body is incorporated under a statute as a body corporate. A state government is not a corporation or a statutory body/authority. It is a government duly elected by members of the public through the democratic process.

[10] On the other hand, a 'local authority' has been defined in s 2 of the Local Government Act 1976 as follows:

'local authority' means any City Council, Municipal Council or District Council, as the case may be, and in relation to the Federal Territory means the Commissioner of the City of Kuala Lumpur appointed under s 4 of the Federal Capital Act 1960;.

[11] A local authority is a corporation or body corporate. This is clearly provided in s 13 of the Local Government Act 1976:

13 Local authorities to be corporations.

Every local authority shall be a body corporate and shall have perpetual succession and a common seal, which may be altered from time to time, and may sue and be sued, acquire, hold and sell property and generally do and perform such acts and things as bodies corporate may by law do and perform.

[12] It can be concluded from the above definitions that a state government is not a corporation, statutory body/authority or local authority. However, a state government is a public authority. With this clear picture in mind, it is now easier to appreciate the decisions made in various cases which can throw some light on the above first issue.

[13] Before going into the cases, I would now refer to s 3 of the Government Proceedings Act 1956 which provides as follows:

Right of the Government to sue

3. Subject to this Act and of any written law where the Government has a claim against any person which would, if such claim had arisen between subject and subject, afford ground of civil proceedings, the claim may be enforced by proceedings taken by or on behalf of the Government for that purpose in accordance with this Act.

[14] Going by s 3 of the above Act, the government can institute a claim against any person if the claim that has arisen between subject and subject 'afford ground for civil proceedings'. Unfortunately the phrase 'afford ground for civil proceedings' has not been defined or given any meaning in the same Act.

[15] The question that arises is whether defamation, in particular libel, as in this case, affords ground to the first plaintiff, being a state government, to enforce the claim by proceedings taken by or on behalf of the state government. Guidance on the answer to this question can be found by reference to case law.

[16] The following cases have held that a corporation, statutory body or local authority, as the case may be, can maintain an action for defamation:

(a) *National Union of General and Municipal Workers v Gillian and Others* [1946] 1 KB 81 where Scott LJ decided:

> It is being assumed that a trade union can sue in tort, I can see no ground for excluding the action of defamation.

(b) *Bognor Regis Urban District Council v Campion* [1972] All ER 61 where Browne J, in applying *National Union of General and Municipal Workers v Gillian* where the Court of Appeal in that case ruled that a trade union can maintain an action in libel or tort, decided:

> Just as a trading company has a trading reputation which it is entitled to protect by bringing an action for defamation, so in my view the council, as a local government corporation has a 'governing' reputation which it is equally entitled to protect in the same way…

(Note: *Bognor Regis Urban District Council v Campion* was later overruled by the House of Lords in *Derbyshire County Council v Times Newspapers Ltd And Others* [1993] 1 All ER 1011)

(c) *Lembaga Kemajuan Tanah Persekutuan & Anor v Dr Tan Kee Kwong* [2012] 3 CLJ 897 where Zabariah Mohd Yusof J held that FELDA, which is a statutory body, and not a local authority or a public authority, is a body corporate which is given the right to sue and be sued under its incorporating statute ie the Land Development Act 1956. Therefore FELDA can maintain an action for libel against the defendant.

[17] On the other hand the following cases have decided otherwise:

(a) *Mayor, Citizens and Aldermen of Manchester v Williams* [1891] 1 QB 94 where a divisional court held that the municipal corporation 'may sue for a libel affecting property, not for one merely affecting personal reputation'.

(b) *South Hetton Coal Company Limited v North Eastern News Association Ltd* [1894] 1 QB 133 where it was decided that a corporation cannot maintain an action for libel in respect of anything reflecting on them personally, but it can maintain an action for libel reflecting on the management of their trade or business.

(c) *Derbyshire County Council v Times Newspapers Ltd And Others* [1993] 1 All ER 1011 where the House of Lords, in dismissing the plaintiff's appeal against the decision of the Court of Appeal which had held that the plaintiff could not bring the action for libel, held, inter alia, as follows:

> Under common law a local authority did not have the right to maintain an action for damages for defamation as it would be contrary to the public interest for the organs of government, whether central or local, to have that right. Not only was there no public interest favouring the right of government organs to sue for libel but it was of the highest public importance that a governmental body should be open to uninhibited public criticism, and a right to sue for defamation would place an undesirable fetter on freedom of speech.

[18] The above cases do not involve a state government, as in the present case. From the above authorities, the case that is closest to the issue of whether the government can maintain an action for defamation is *Derbyshire* where the plaintiff is a local authority.

[19] From the earlier conclusion that I made that the state government is a public authority, and not even a local authority, then in applying the principle in *Derbyshire*, I hold that the test on whether the state government can maintain an action for defamation should be stricter and higher than that which is for a local authority. Even though a local authority is not elected through a democratic process by members of the politic, yet the House of Lords in *Derbyshire* held that such local authority cannot be allowed to maintain an action for defamation. Therefore, in the case of a state government, it is even more compelling that the courts should take the position that such government should certainly not be allowed to maintain an action for defamation.

[20] I now wish to highlight some important principles that were deliberated in *Derbyshire* that merit careful consideration in the present case.

[21] The facts in *Derbyshire* were that the plaintiff, a local authority, brought an action for damages for libel against the defendants in respect of two newspaper articles which had questioned the propriety of investments made for its superannuation fund. On a preliminary issue as to whether the plaintiff had a cause of action against the defendants, the judge at the court of first instance

held that a local authority could sue for libel in respect of its governmental and administrative functions, and dismissed the defendant's application to strike out the statement of claim.

[22] On appeal by the defendants, the Court of Appeal (see *Derbyshire Council v Times Newspaper Ltd And Others*, CA in [1992] 3 All ER 65–66), in deciding that the plaintiff could not bring the action for libel, held as follows:

> Although in general a trading or non-trading corporation which could show that it had a corporate reputation (as distinct from that of its members) which was capable of being damaged by a defamatory statement could sue in libel to protect that reputation in the same way as could a natural person, *a local authority had no right to sue for libel in respect of its governing or administrative reputation if no actual financial loss was pleaded or alleged*. If a non-trading public authority were to have that right it would be able to stifle legitimate public criticism of its activities and thereby interfere with the right to freedom of expression enshrined in art 10a of the Convention for the Protection of Human Rights and Fundamental Freedoms, and *a right to sue for libel was unnecessary in a democratic society for the protection of a public authority's reputation since that could adequately be protected by bringing an action for malicious falsehood or by a prosecution for criminal libel. It followed that the plaintiff local authority could not maintain an action for a libel which reflected upon it as a local authority in relation to its governmental and administrative functions, including its statutory responsibility for the investment and control of its superannuation fund*. The appeal would therefore be allowed. (Emphasis added.)

[23] In delivering its judgment in *Derbyshire* in the House of Lords, Lord Keith of Kinkel ('Lord Keith'), inter alia, at p 1017 stated:

> There are, however, *features of a local authority* which may be regarded as distinguishing it from other types of corporation, whether trading or non-trading. *The most important of these features is that it is a governmental body. Further, it is a democratically elected body, the electoral process nowadays being conducted almost exclusively on party political lines. It is of the highest public importance that a democratically elected governmental body, or indeed any governmental body, should be open to uninhibited public criticism*. The threat of a civil action for defamation must inevitably have an inhibiting effect on freedom of speech. (Emphasis added.)

and at p 1019, he further stated:

> It is of some significance to observe that a number of departments of central government in the United Kingdom are statutorily created corporations, including the Secretaries of State for Defence, Education and Science, Energy, Environment and Social Services. If a local authority can sue for libel there would appear to be no reason in logic for holding that any of these departments (apart from two which are made corporations only for the purpose of holding land) were not also entitled to sue. But as is shown by the decision in *A-G v Guardian Newspapers Ltd (No 2)* [1988] 3 All ER 545; [1990] 1 AC 109, a case concerned with confidentiality, there are rights available to private citizens which institutions of central government are not

> in a position to exercise unless they can show that it is the public interest to do so. The same applies, in my opinion, to local authorities. In both cases *I regard it as right for this House to lay down that not only is there no public interest favouring the right of organs of government, whether central or local, to sue for libel, but that it is contrary to the public interest that they should have it. It is contrary to the public interest because to admit such actions would place an undesirable fetter on freedom of speech*. (Emphasis added.)

[24] At p 1020, Lord Keith did admit that the conclusion reached by the Court of Appeal and also the House of Lords, that under the common law of England a local authority does not have the right to maintain an action of damages for defamation, was done so principally by reference to article 10 of the European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms, Rome 4, 4 November 1950) to which the United Kingdom has adhered but which has not been enacted into domestic law. Article 10 states as follows:

> (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers …
>
> (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Lord Keith had this to say in relation to the above article 10:

> As regards the words 'necessary in a democratic society' in connection with the restrictions on the right to freedom of expression which may properly be prescribed by law, the jurisprudence of the European Court of Human Rights has established that 'necessary' requires the existence of a pressing social need, and that the restrictions should be no more than is proportionate to the legitimate aim pursued. The domestic courts have 'a margin of appreciation' based upon local knowledge of the needs of the society to which they belong (see *Sunday Times v UK* (1979) 2 EHRR 254, *Barthold v Germany* (1985) 7 EHRR 383 and *Lingens v Austria* (1986) 8 EHRR 407 at 418). The Court of Appeal approached the matter upon the basis that the law of England was uncertain upon the issue lying at the heart of the case, having regard in particular to the conflicting decisions in *Manchester Corp v Williams* [1891] 1 QB 94 63 LT 805 and *Bognor Regis UDC v Campion* [1972] 2 All ER 61; [1972] 2 QB 169 and to the absence of any relevant decision in the Court of Appeal or in this House. In that situation it was appropriate to have regard to the convention. *Balcombe LJ* referred in this connection to *Brind v Secretary of State for the Home Dept* [1991] 1 All ER 720; [1991] 1 AC 696, *A-G v Guardian Newspapers*

Ltd [1987] 3 All ER 316; [1987] 1 WLR 1248, *Re W (a minor) (wardship: freedom of publication)* [1992] 1 All ER 794; [1992] 1 WLR 100 and *A-G v Guardian Newspapers Ltd (No 2)* [1988] 3 All ER 545; [1990] 1 AC 109. *Having examined other authorities he concluded, having carried out the balancing exercise reguisite for the purposes of art 10 of the convention, that there was no pressing social need that a corporate public authority should have the right to sue in defamation for the protection of its reputation. That must certainly be true considering that in the past 100 years there are only two known instances of a defamation action by a local authority*. He considered that the right to sue for malicious falsehood gave such a body all the protection which was necessary. Similar views were expressed by Ralph Gibson and Butler-Sloss LJJ, who observed that the law of criminal libel might be available in suitable cases, to afford additional protection. All three Lords Justices also alluded to the consideration that the publication of defamatory matter concerning local authority was likely to reflect also on individual councilors or officers, and that the prospect of actions for libel at their instance also afforded some protection to the local authority.

My Lords, I have reached my conclusion upon the common law of England without finding any need to rely upon the European convention. Lord Goff of Chievelev in A-G Guardian Newspapers Ltd (No 2) [1988] 3 All ER 545 at 660, [1990] 1 AC 109 at 283–284 expressed the opinion that in the field of freedom of speech there was no difference in principle between English law on the subiect and art 10 of the convention. I agree, and can only add that I find it satisfactory to be able to conclude that the common law of England is consistent with the obligations assumed by the Crown under the treaty in this particular field.

For these reason I would dismiss the appeal. It follows that Bognor Regis UPC v Campion [1972] 2 All ER 61, [1972] 2 QB 169 was wrongly decided and should be overruled. (Emphasis added.)

[25] Coming back to the Malaysian context, it is to be noted that although the above European Convention on Human Rights is not applicable here, we do have art 10 of the Federal Constitution which, inter alia, provides as follows:

Freedom of speech, assembly and association

10.

(1) Subject to Clauses (2), (3) and (4) —

(a) every citizen has the right to freedom of speech and expression;

(b) all citizens have the right to assemble peaceably and without arms;

(c) all citizens have the right to form associations.

(2) Parliament may by law impose —

(a) on the rights conferred by paragraph (a) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to

protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence;

(b) on the right conferred by paragraph (b) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof or public order;

(c) on the right conferred by paragraph (c) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, public order or morality.

[26] In terms of policy and rationale, our art 10 is not much different from the European Convention on Human Rights. The freedom of speech is subject, inter alia, to any law which Parliament may impose 'as it deems necessary or expedient' in the interest of the various matters of the bodies or persons spelt out in art 10 cl 2.

[27] Thus far, while Parliament has enacted various Acts which it deems necessary or expedient to restrict the freedom of speech and expression such as the Sedition Act 1948, Official Secrets Act 1972, Printing Presses and Publications Act 1984, and laws on the control of imported publications, it has not enacted any law expressly to provide for the matter on whether the federal government or state government can institute civil proceedings for libel or slander against such government, or any of its servants or officers. The Defamation Act 1957 is an Act of Parliament relating to the law of libel and slander and other malicious falsehoods. However, nowhere does the Act contain any provisions on the issue whether a state government should be allowed to maintain an action for defamation.

[28] In view of the absence of express statutory provisions to deal with the above first issue, it can be safely concluded that we have resort to common law. The common law position is spelt out in very clear and precise terms by the House of Lords in *Derbyshire*.

[29] Accordingly, I adopt the principles laid down in *Derbyshire*, and hold that the first plaintiff, which is the Government of the State of Terengganu, is a public authority. As such it does not have a personal reputation to protect. Neither does it have a governing reputation, as in the case of a corporation or statutory body/authority, to protect. The state government is duly elected by the members of the public through the democratic process and it should be transparent and accountable to the electorate. There should be freedom of speech and expression by members of the public in order to act as a check and balance on the executive and the government. It is therefore not in the interest of the public that the state government be allowed to institute or maintain any

action for libel or slander against any person. Otherwise, it would stifle constructive queries or comments which can contribute to and ensure good governance of the subjects by the state government. There can be no financial loss suffered by the state government even if defamatory statements are made against it by any person. In a situation where there is evidence of defamation, the offender can be prosecuted by the public prosecutor for criminal defamation under s 499 of the Penal Code.

[30] In the past nearly 55 years in this country since Merdeka Day, there does not appear to be any action maintained by any state government, or even the federal government, against any member of the public or any corporation or body for defamation, and which claim has been allowed by the courts. It is therefore my humble opinion that such sound tradition and good precedent are in the best interests of each and every of our citizens, and that should be jealously guarded and upheld for posterity, for the common good.

Regarding the second issue

[31] Section 24(3) of the Government Proceedings Act 1956 provides for the appearance of law officers as follows:

> (3) An advocate and solicitor of the High Court duly retained by the Attorney General in the case of civil proceedings by or against the Federal Government or a Federal officer, or by the Legal Adviser, or, in the case of the States of Sabah and Sarawak, by the State Attorney General in the case of civil proceedings by or against the Government of a State or a State officer, may appear as advocate on behalf of such Government or officer in such proceedings.

[32] In this case, Messrs Hisham Sobri & Kadir, Advocates and Solicitors of the High Court, can only be allowed to represent the first plaintiff upon proof that they have been 'duly retained' or given a 'Fiat' (which is the common term used) by the state legal advisor of Terengganu ('the state legal advisor').

[33] The court notes that when the writ and statement of claim were filed on 15 December 2011, the first plaintiff's solicitors did not file or exhibit the fiat or letter of the state legal advisor duly retaining them to represent the first plaintiff in these proceedings. At the time when they filed their written submissions on 18 July 2012 regarding the above two preliminary issues for the court's consideration, again there was no record of such fiat or letter being given by the state legal advisor, even though in their submissions, the plaintiff's solicitors submitted that they had been given such a fiat or letter.

[34] In their written submissions filed on 17 July 2012, the solicitors for the defendants submitted that in the absence of such a fiat, the first plaintiff has not

been duly represented in this case, and by virtue of that, the first plaintiff's pleadings are illegal and must be duly struck out by this court.

[35] It was only on 20 July 2012 that Messrs Hisham Sobri & Kadir filed the additional bundle of authorities for the plaintiffs for the purpose of the submissions which bundle contains the fiat dated 13 December 2011 issued by the state legal advisor, authorising Messrs Hisham Sobri & Kadir to represent the State Government of Terengganu in this case and in any appeal to the Court of Appeal and/or to the Federal Court of Malaysia.

[36] From the strict legal and procedural point of view, the writ, statement of claim, statement of reply and written submissions of the first plaintiff should not be accepted by the court since on the respective dates of the filing of the pleadings and submissions, the fiat was not exhibited in court to prove that the requirements of s 24(3) of the Government Proceedings Act 1956 have been complied with.

[37] However, in the light of the fact that Messrs Hisham Sobri & Kadir filed the fiat on 20 July 2012, which fiat is dated 13 December 2012 ie two days before the writ and statement of claim were filed, this court has decided to give the benefit of the doubt to the first plaintiff and its solicitors for the late filing of the fiat, and accept the fiat as being duly given for the purpose of the first plaintiff's civil suit. This is done pursuant to the court's powers under O 1A and the inherent jurisdiction of the court under O 92 r 4 of the Rules of the High Court 1980.

[38] I therefore rule that Messrs Hisham, Sobri & Kadir have the locus standi to represent the first plaintiff in these proceedings. The pleadings and submissions filed by the same solicitors are therefore legal and valid, and ought not to be struck out.

[39] Notwithstanding my ruling on the second issue, in view of my above ruling on the first issue, accordingly, the first plaintiff's claim in the writ and statement of claim is struck out, with no order as to costs.

First plaintiff's claim struck off with no order as to costs.

Reported by Kanesh Sundrum